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November 24, 1997

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Technical Requirements to Enable	)	
Blocking of Video Programming	)	ET Docket No. 97-206
Based on Program Ratings	)	
	)	
Implementation of Sections 551(c),	)	
(d) and (e) of the	)	
Telecommunications Act of 1996	)	

COMMENTS OF THE BUSINESS SOFTWARE ALLIANCE

In its Notice of Proposed Rulemaking in the above-captioned proceeding, the Commission stated that proposed program blocking requirements should apply to "any computer that is sold with TV receiver capability" and a monitor that meets other specified criteria. NPRM, ¶ 22. The Business Software Alliance ("BSA"), on behalf of the nation's leading software publishers and other high-tech companies, urges the Commission to adhere closely to the language chosen by Congress in the Telecommunications Act of 1996 (the "Act") as it decides what technology should fall subject to the FCC's program blocking requirements.[1] The Commission's rules should reflect the fact that most personal computer

[1] BSA promotes the continued growth of the computer software industry through its international enforcement, education, and public policy programs in 65 countries throughout North America, Europe, Asia and Latin America. BSA worldwide members include the leading publishers of software for personal computers and the Internet, including Adobe Systems, Inc.; Autodesk, Inc.; Bentley Systems, Inc.; Lotus Development Corp.; Microsoft Corporation; Novell, Inc.; The Santa Cruz Operation, Inc.; and Symantec Corporation. BSA's Policy Council consists of these publishers and other leading computer technology companies including Apple Computer, Inc.; Compaq Computer Corporation; Digital Equipment Corporation; IBM; Intel Corp.; Intuit Inc.; and Sybase.

systems sold today are not capable of nor configured to receive television signals such that a child can happen upon broadcast television programming by simply turning on a computer. The Commission's intention to apply program blocking requirements only to "apparatus designed to receive television signals" is consistent with Section 551(c) of the Act, 47 U.S.C. § 303(x).[2] However, BSA cautions the Commission against extending these requirements to personal computers ("PCs") and computer peripherals, which cannot, on their own, receive television signals. The concerns raised by some of the broad statements in the NPRM, which appear dangerously close to equating all PCs with television apparatus, prompt these comments.

I. THE ACT REQUIRES ONLY "APPARATUS DESIGNED TO RECEIVE TELEVISION SIGNALS" TO INCORPORATE V-CHIP TECHNOLOGY.

In adopting the Act, Congress required that all "apparatus designed to receive television signals . . . that have a picture screen 13 inches or greater in size (measured diagonally) . . . be equipped with a feature designed to enable viewers to block display of all programs with a common rating." Section 551(c). This "feature" is often referred to as the "V-chip."

Though the Act does not define "apparatus designed to receive television signals," the statutory language suggests that this term is limited to television receivers and equipment designed to receive over-the-air broadcast or comparable television signals. For example, Section 551(a)(2) recognizes that only "television broadcast and cable programming" have become pervasive in American households and directs the Commission

[2] Unless otherwise noted, all section references are to the Telecommunications Act of 1996.

to implement the V-chip to respond to concerns created by some such programming. The Act makes no similar findings with respect to material typically accessed by PCs. Further, Section 551(e)(2) directs the Commission to implement the V-chip only after consultation with the "*television manufacturing industry*." *Id.* (emphasis added). The Act does not mention or require input from PC equipment manufacturers. Given that Congress placed such high value on consultations with industries affected by the program blocking requirements,[3] it is apparent that Congress did not intend to extend these requirements to traditional PCs or other computer equipment.

The Commission, as indicated throughout the NPRM, seems to concur that "apparatus designed to receive television signals" is limited to devices comparable to today's commonplace television receivers. Most notably, the Commission stated that the NPRM commences the "process of requiring *television manufacturers* to include blocking technology in their television receivers." NPRM, ¶ 6 (emphasis added). The Commission specifically recognized the technologies that currently distribute television programming to the home -- *e.g.*, broadcast television, cable television, Multipoint Distribution Service ("MDS"), and Direct Broadcast Satellite ("DBS") -- and it proposed that these technologies should support the program blocking requirements. *Id.* at ¶¶ 1, 20. In general, the NPRM

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[3] *See, e.g.*, § 303(w) (directing the Commission to prescribe procedures for the identification of certain programming "on the basis of recommendations from an advisory committee"); § 551(b)(2) (providing for the establishment of a committee including "television broadcasters, television programming producers, and cable operators" to advise the Commission on programming ratings); § 551(e)(1) (requiring the Commission to consult with public and private interest groups before mandating programming ratings); and § 551(e)(2) (requiring the Commission to consult with the "television manufacturing industry" before requiring "apparatus designed to receive television signals" to include the V-chip).

adheres to Congress' mandate that "most new *television receivers*" include V-chip technology. *Id.* at ¶ 3 (emphasis added).

II. PERSONAL COMPUTER EQUIPMENT IS NOT GENERALLY "DESIGNED TO RECEIVE TELEVISION SIGNALS" AND THEREFORE SHOULD NOT BE SUBJECT TO PROGRAM BLOCKING REQUIREMENTS.

The Commission's NPRM recognizes that new technologies, including personal computer systems, may be developed that are capable of receiving television signals. *Id.* at ¶ 22. However, the NPRM appears dangerously close to equating *all* PCs "sold with the capability to *view* television and other video programming" with an "apparatus designed to *receive* television signals." *See id.* at ¶¶ 22-23 (emphasis added).

BSA strongly cautions the Commission to avoid the confusion caused by imprecise distinctions and to steer away from the assumption that all personal computer systems -- though they are capable of displaying some video material -- are capable of directly receiving television signals otherwise distributed via broadcast, cable, MDS, and DBS. Most PCs, computer monitors, and peripheral equipment sold today are not designed to receive television signals. The typical PC sold today is not configured to receive over-the-air or cable signals that deliver today's broadcast television programming. A PC may have the capability of displaying video, but the Commission should not confuse that capability with the receipt of television signals. Because PCs are generally not television receivers, they should not generally be subject to the program blocking requirements mandated by the Act.

The Commission also should avoid extending the V-chip requirement to other computer processor-driven devices that interface with video programming, but do not

act as television signal receivers. For example, some electronics manufacturers recently developed new technology, sometimes referred to as "Web television," that permits consumers to access the World Wide Web ("Web") through their television sets. To date, consumers have been offered Web television services through the use of a set-top box or similar device that includes a computer chip and often comes bundled with a modem to permit consumers to use their television sets as they might use a computer monitor. Web television enables television viewers to access the Web while watching television in order to display information of interest, such as programming schedules, news, sports statistics, or product information related to a television advertisement. The television set itself, *not the set-top box or other device used to access the Web,* receives and then displays the television signal as well as the signal transmitted via line 21 of the television vertical blanking interval ("VBI"), in which the Commission proposes inclusion of program ratings.[4] NPRM, ¶ 7. The device that makes Web television possible is not "designed to receive television signals" as that term is used in Section 551(c). Rather, such devices pass through the television signals that carry the video programming. Thus, only the television set should be subject to the Act's program blocking requirements.

[4] 47 C.F.R. § 73.682(a)(22) currently requires line 21 of the VBI to include closed captions for the hearing impaired. Subpart E of Section 73 applies only to "television broadcast stations," which it defines to include traditional TV broadcast, noncommercial educational TV broadcast, low power TV, and TV translator stations. 47 C.F.R. § 73.601. 47 C.F.R. § 76.606 prohibits cable operators from removing or altering the closed captioning data contained on line 21 of the VBI. Because most computer systems are not capable of receiving and displaying information contained in line 21 of the VBI, no similar rule requires personal computer systems to either display or refrain from altering such information. It follows that personal computer systems should not be subject to program blocking requirements since the relevant information will be contained in the VBI.

Using existing technology, there is one circumstance in which personal computer equipment can receive television signals. A personal computer system *that also includes a television signal tuner and receiver* can function as a television. Such systems are clearly subject to the requirements of Section 551(c) because they are "designed to receive television signals" and should fall within the FCC's rules.

The broad statements in the Commission's NPRM, *see id.* at ¶¶ 22-23, have raised concern among BSA member companies and their customers that the Commission may over-interpret the provisions of the Act and extend the V-chip regulations far beyond their intended target. Unlike broadcast television, cable television, MDS, and DBS, all of which the Commission recognized as technologies that are capable of distributing television programming, personal computer systems generally do not enable viewers to receive television signals. Consequently, such equipment does not constitute "apparatus designed to receive television signals," and therefore the Commission's rules should make clear that such equipment is not subject to requirements for programming blocking devices.[5]

Finally, BSA is concerned about the Commission's proposal that "all DTV receiver boards . . . *regardless of whether they are sold with a computer and monitor with a viewable picture size of 13 inches or larger)* be required to include [V-chip technology]." NPRM, ¶ 23 (emphasis added). This proposal has no legal foundation and no policy

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[5] Moreover, an apparatus capable of displaying video distributed over the Internet should not be subject to the Commission's rules for program blocking devices because such an apparatus plainly falls outside the scope of Section 551(c) and Congress's intent to subject only the "television manufacturing industry" to program blocking device requirements. *See* § 551(e)(2); *see also* Doug Abrahms, *FCC Wants to Extend V-chip to Computers; Says Target is TV-ready PCs, not Internet*, Wash. Times, Nov. 3, 1997, at A1 (quoting staff of Rep. Edward J. Markey stating that Congress's intent "is not to impose the V-chip on the computer").

justification. First, Section 551(c) limits the FCC's authority to apparatus (i) designed to receive television signals, (ii) "that are shipped in interstate commerce or manufactured in the United States," and (iii) "that have a picture screen 13 inches or greater in size (measured diagonally)." The Commission has no authority to impose requirements on devices that are associated with a picture size of less than 13 inches; thus the FCC lacks authority to impose the requirement proposed here. Second, the Commission has failed to make clear why a special rule or policy is needed for DTV plug-in circuit boards. These devices either meet the definition of an "apparatus designed to receive television signals" or they do not. There is no justification for a special rule on this technology.

CONCLUSION

For the reasons stated above, BSA urges the Commission to apply the V-chip manufacturing requirement narrowly, in accordance with the Act, to only television manufacturers and manufacturers of other equipment designed to receive television signals.

Respectfully submitted,

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